IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

MFA.No. 809 of 2002(B)

O.P(MV).NO.715/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA.
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APPELLANT/CLAIMANT:

UNNI, S/O. GOVINDAN, VELIYAMKUNNATH HOUSE, ERAMALLOOR P.O., KOTHAMANGALAM.

BY ADV. SRI.P.K.MUHAMMED,
SRI.P.C.SUNIL KUMAR.

RESPONDENTS/RESPONDENTS:
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1. **MOIDU, S/O. BAVA, MANIMALAKUNNEL HOUSE, ERAMALLOOR, NELLIKUZHY, KOTHAMANGALAM.**
2. **P.A. SUDHIR, PUTHENPURAYIL HOUSE, B.O.C JUNCTION, MUVATTUPUZHA.**
3. **UNITED INDIA INSURANCE COMPANY LTD., B.O. MUNICIPAL SHOPPING COMPLEX MUVATTUPUZHA-686 661.**

BY ADV. SRI.M.A.GEORGE FOR R3.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 809 of 2002

Dated this the 5th day of June, 2007

Judgment

Koshy, J.

Appellant, while travelling in an autorickshaw on 19.3.1999, met with a serious accident due to the negligence of first respondent driver. The above autorickshaw was owned by the second respondent and insured by the third respondent. Tribunal awarded an amount of Rs.79,570/- against a claim limited to Rs.1,50,000/- and directed the third respondent insurance company to deposit the same. Only quantum of compensation is disputed in this appeal.

2. Appellant was aged 42 at the time of accident. Tribunal has calculated compensation taking 15 as the multiplier. Taking guidance from second schedule, it requires no change. According to the appellant, he is getting Rs.4,500/- per month as he was working as a rubber tapper. He examined PW2, his employer, and he deposed that he was paying daily wages at the rate of Rs.150/- per day and even if he gets 20 days' work, his

earning will be Rs.3,000/- per month. However, in the absence of data, tribunal has taken only Rs.1,500/- as monthly income. In the absence of data, we are not changing the same.

3. With regard to percentage of disability, as per medical certificate and treatment record, he was admitted in St. Joseph's Hospital, Dharmagiri, Kothamangalam, on 20.3.1999 and discharged on 10.4.1999. He had sustained a fracture shaft of femur (L) which was treated with initial skeletal fraction followed by open reduction and internal fixation (major operation) on 30.3.1999. He was then reviewed in OPD as follow up on 17.4.1999, 15.5.1999, 28.6.1999, 31.7.1999 and 16.9.1999 respectively. Ext.A8 disability certificate issued by Dr. Jayakumar M., M.S. (Ortho), D. Ortho, Assistant Professor of Orthopaedics, Medical College Hospital, Thrissur assessed 15% permanent disability as according to him:

> "1. The patient is walking with a lurch towards the left side.
>
> 2. There is shortening of 1 c.m. the (Lt.) lower limb.

> 3. There is 2 c.m. wasting of the (Lt.) thigh muscles and 1.5 c.m. wasting of the (Lt.) calf muscle.
>
> 4. Flexion of the knee joint is limited to only 100 degree further movement painfully restricted.
>
> 5. Tenderness over the (Lt.) greater trochanter with limitation of Abduction of the (Lt.) hip joint."

For no reason it was rejected. Tribunal awarded compensation only for 8% disability. We are of the view that tribunal was not justified in rejecting the above certificate assessing 15% disability which was undisputed especially considering the low multiplicand that was taken. If that be so, compensation payable will be Rs.1500 x 12 x 15 x $\frac{15}{100}$ = Rs.40,500/-. The Tribunal has granted only Rs.21,600/- for disability and Rs.5,000/- for loss of earning power. Deducting the same, balance payable will be Rs.13,900/-. As a result of the accident, there was shortening of the legs and wastage of thigh muscles and he was walking with a lurch towards left side. Hence, we are of the opinion that Rs.1,500/- should be allowed for disfigurement. Thus, total compensation payable will be Rs.15,400/-. The above

amount of Rs.15,400/- should be deposited by the third respondent insurance company with 8% interest from the date of application till deposit. On deposit of the amount, claimant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.809/2002

JUDGMENT

Dated:5th June, 2007